

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
MICHAEL and KAREN SCHIELTZ Dubuque County, Iowa	NO. 2007-AFO- 03

TO: Michael and Karen Schieltz
19796 Rt. 136
New Vienna, Iowa 52065

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Michael and Karen Schieltz for the purpose of resolving the issues surrounding a manure discharge at Mr. and Mrs. Schieltz's facility and the resulting fish kill in the North Fork Maquoketa River. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Sue Miller, Field Office #1
Iowa Department of Natural Resources
909 West Main Suite #4
Manchester, IA 52057
Phone: 563/927-2640

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or 2005 Iowa Code Supplement chapter 459A, and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Michael and Karen Schieltz own and operate an animal feeding operation (AFO) located at 19796 Rt. 136 New Vienna, Iowa. The operation consists of a beef cattle open feedlot on the northeast corner of the property and two buildings with an open concrete lot for hogs on the southeast side of the property. The hog buildings are open to allow the hogs to go out to the open lot. Concrete settling basins collect solids from each open lot. At the time the investigations in this matter were conducted, Mr. and Mrs. Schieltz stated that 310 cattle and 1000 hogs were present at this site.
2. On July 27, 2006 DNR was contacted by a New Vienna resident concerning a fish kill in the North Fork Maquoketa River. An investigation conducted by DNR Field Office 1 (FO1) revealed dead fish at the County Road Y-13 bridge east of New Vienna. A field test detected ammonia in the water at a nearby site. Mr. and Mrs. Schieltz's feedlot was directly upstream from the site. Investigators arrived at the Schieltz's feedlot as Mr. Schieltz was spreading manure on his property. Mr. Schieltz reported that heavy rains on July 25, 2006 caused manure solids from the cattle settling basin to overflow and flow directly into the North Fork Maquoketa River. The route of flow was traced from the cattle open lot settling basin to a nearby stream crossing. Manure solids were observed on the bank of the river at the stream crossing. A field test detected ammonia in the water at a nearby site. A water sample from this site contained an ammonia concentration of 0.92 milligrams per liter (mg/L). No dead fish were observed upstream from the site, but a water sample from a stream upstream of the feedlot revealed an ammonia concentration of 0.71 milligrams per liter (mg/L). A sample at the stream crossing below the feedlot revealed an ammonia concentration of 0.91 milligrams per liter (mg/L). Manure from the hog lot was present on the ground in an area to the east of the lot, but there was no evidence that hog manure reached the North Fork Maquoketa River.
3. On August 10, 2006, Notice of Violation was issued by DNR to Mr. and Mrs. Schieltz for the violations associated with the July 27, 2006 fish kill investigation. The letter cited water quality, manure containment and prohibited discharge violations. The letter required Mr. and Mrs. Schieltz to submit a National Pollutant Discharge Elimination System (NPDES) permit application to the DNR within 90 days of receipt of the letter. The letter also informed Mr. and Mrs. Schieltz that the violations had been submitted to legal staff for consideration of further legal action. A copy of the inspection report was included with the letter.
4. The fish kill evaluation by Fisheries staff concluded that 54,208 fish valued at \$10,738.46 were killed. The costs of performing this assessment were \$721.30. The total fish kill assessment totals \$11,459.76. For purposes of settlement, the restitution requested in this administrative consent order has been reduced to \$9,000.00.

IV. CONCLUSIONS OF LAW

1. 2005 Iowa Code Supplement section 459A.401(1) and 567 IAC 65.101(1) require the

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minimum level of manure control for any open feedlot to be the removal of settleable solids from the manure prior to discharge into a water of the state as defined by 455B.171. FOI observed manure solids in the North Fork Maquoketa River, and the route taken by the manure solids from the Schieltz's feedlot into the North Fork Maquoketa River. The above-facts disclose violations of these provisions.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state as defined by 455B.171, except for adequately treated pollutants discharged pursuant to a permit from DNR. A permit has not been issued for this facility and FOI found evidence of the discharge of untreated pollutants into waters of the state as defined by 455B.171. The above-facts indicate a violation of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. FOI observed manure solids from the Schieltz's facility in the North Fork Maquoketa River. The discharge resulted in a fish kill. The above-facts disclose a violation of one or more of these criteria.

4. 567 IAC 65.101(1)"b" requires a settling facility to have "sufficient capacity to store settleable solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event." During the rainstorm of July 25, 2006 the Schieltz's cattle open lot settling basin overflowed due to insufficient capacity. The above-facts indicate a violation of this provision.

5. 567 IAC 65.103(1) states that DNR "may evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the department shall consider the following factors:

- a) The size of the operation and the amount of manure or process wastewater reaching waters of the United States;
- b) The location of the operation relative to waters of the United States;
- c) The means of conveyance of manure or process wastewater to waters of the United States;
- d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States;
- e) And other relevant factors." Inspection of Mr. and Mrs. Schieltz's feedlot and analysis of these factors indicates that the site shall be designated a CAFO.

6. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state as defined by 455B.171 in violation of state law shall also be liable to pay restitution to DNR for injury caused to a wild animal by the pollution. The Natural Resources Commission has adopted 571 IAC chapter 113. 571 IAC 113 provides that a

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person who is liable for polluting a water of this state as defined by 455B.171 in violation of state law shall also be liable to pay restitution to DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the discharge at Mr. and Mrs. Schieltz's site.

V. ORDER

THEREFORE, it is hereby ordered and Michael and Karen Schieltz agree to do the following:

1. Submit a Plan of Action on how manure from the AFO will be prevented from flowing into the stream within 30 days of the date the Director signs this administrative consent order. The Plan of Action must include a schedule for submittal of the engineering evaluation not to exceed 90 days from the date the Director signs this administrative consent order;
2. Submit an application for a NPDES permit within 90 days from the date the Director signs this administrative consent order and thereafter provide all information and take all actions necessary to obtain an NPDES permit in accordance with 567 IAC 65.104;
3. Pay an administrative penalty of \$4,000.00 and restitution in the amount of \$9,000.00 for a total of \$13,000.00 in accordance with the following payment plan. The administrative penalty shall be paid first and the remaining payments shall be applied to the restitution:

\$365.00 due March 1, 2007	\$361.00 due September 1, 2008
\$361.00 due April 1, 2007	\$361.00 due October 1, 2008
\$361.00 due May 1, 2007	\$361.00 due November 1, 2008
\$361.00 due June 1, 2007	\$361.00 due December 1, 2008
\$361.00 due July 1, 2007	\$361.00 due January 1, 2009
\$361.00 due August 1, 2007	\$361.00 due February 1, 2009
\$361.00 due September 1, 2007	\$361.00 due March 1, 2009
\$361.00 due October 1, 2007	\$361.00 due April 1, 2009
\$361.00 due November 1, 2007	\$361.00 due May 1, 2009
\$361.00 due December 1, 2007	\$361.00 due June 1, 2009
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\$361.00 due June 1, 2008	\$361.00 due December 1, 2009
\$361.00 due July 1, 2008	\$361.00 due January 1, 2010
\$361.00 due August 1, 2008	\$361.00 due February 1, 2010

If any of the said payments are not received by the due date, the remaining penalty and restitution shall be due immediately.

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VI. PENALTY

2005 Iowa Code Supplement section 459A.502 and Iowa Code section 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2005 Iowa Code Supplement 459A.502 and Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$4,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Mr. and Mrs. Schieltz have saved time, effort and money by not constructing and properly maintaining sufficient manure storage facilities. However, Mr. and Mrs. Schieltz are currently in the process of installing manure controls and any economic benefit they received is minimal. Based on the above considerations, economic benefit it not being assessed.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by visual and olfactory observation of impact to the North Fork Maquoketa River, including dead fish. As a result of the violations herein, 5.7 miles of North Fork Maquoketa River were impacted by the manure discharge. It was estimated that 54,208 fish were killed. Multiple rule or statutory provisions were violated including discharge to water of the state as defined by 455B.171, failure to maintain sufficient manure controls, and violation of water quality standards. The violations threaten the integrity of the water quality program. Based on the above considerations, \$3,000.00 is assessed for this factor.

Culpability – Mr. and Mrs. Schieltz have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Proper handling of manure and adequate storage areas could have prevented this fish kill. When they became aware of the manure discharge, Mr. and Mrs. Schieltz took immediate action to stop the discharge. Based on the above considerations, \$1,000.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Michael and Karen Schieltz. For that reason, Michael and Karen Schieltz waive their right to appeal this order or any part thereof.

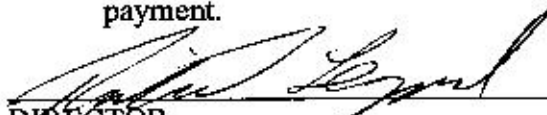
VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

Penalty and Restitution Payments should be submitted to:


Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

*Please include Administrative Consent Order Name and Number with each payment.



DIRECTOR
Iowa Department of Natural Resources

Dated this 14 day of
Feb, 2007.



Michael Schieltz

Dated this 30 day of
Jan, 2007.



Karen Schieltz

Dated this 30 day of
Jan, 2007.

No Facility Number; Kelli Book; Sue Miller; Kenneth Hossenius; Marion Conover; Gene Tinker; EPA; VII.C, VIII.D.1.b, VIII.D.3.a